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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,

No. 11-CR-331 MMC

12 Plaintiff,

**ORDER STRIKING GOVERNMENT'S  
MOTION FOR WAIVER OF ATTORNEY-  
CLIENT PRIVILEGE; AFFORDING  
GOVERNMENT LEAVE TO FILE NEW  
MOTION**

13 v.

14 PETE AGAPITO CHAVEZ,

15 Defendant.  
16 \_\_\_\_\_/

17 The Court is in receipt of the government's "Motion for Limited Waiver of Attorney-  
18 Client Privilege," filed March 20, 2015. As set forth below, the motion is not filed in  
19 compliance with the Criminal Local Rules of this district and, consequently, is procedurally  
20 defective.

21 First, the government has, once again, violated Rule 47-2. See Crim. L.R. 47-2(a)  
22 (requiring motions to be "filed, served, and noticed in writing for hearing") (emphasis  
23 added); (Order, filed January 5, 2015 (directing government to serve defendant with earlier-  
24 filed motion)). Additionally, the government has violated rule 47-2 by failing to notice the  
25 motion for hearing, see Crim. L.R. 47-2(a) (requiring motions to be "filed, served, and  
26 noticed in writing for hearing") (emphasis added), and by failing to file a declaration in  
27 support of the factual assertions on which it relies, see Crim. L.R. 47-2(b) (providing  
28 "[m]otions presenting issues of fact shall be supported by affidavits or declarations"); (Mot.  
at 2 (stating government has conferred with defendant's prior counsel who have informed

1 government they will not provide evidence bearing on defendant's motion unless Court first  
2 finds waiver of attorney-client privilege)).

3 Accordingly, the motion is hereby STRICKEN and the government is, for the second  
4 time, afforded leave to file a motion for a finding of a limited waiver of the attorney-client  
5 privilege. Any such motion shall be filed no later than April 1, 2015, which filing shall be  
6 accompanied by proof of mailed service on defendant, and shall be noticed for hearing on  
7 a schedule that allows defendant no less than 4 weeks to respond.

8 Lastly, the Court notes that, in addition to the above-described deficiencies, the  
9 order the government seeks by the instant motion, at least as presently described, is  
10 narrower than the issues raised in defendant's remaining claim. In particular, the  
11 government seeks an order finding a waiver "on the limited issue of whether (1) [defendant]  
12 was any [sic] forced to take a plea (2) any of prior counsel refused to file a Notice of  
13 Appeal" (see Mot. at 2:8-10), whereas the remaining issues as set forth by the Court  
14 include not only those issues but also issues as to whether "trial counsel provided  
15 ineffective assistance by failing to conduct a proper investigation, . . . failing to move to  
16 dismiss the indictment, and failing to move to suppress evidence" (see Order, filed Oct. 15,  
17 2014 at 2:1-3; see also Order, filed February 17, 2015 at 2:7 (noting evidence submitted by  
18 government failed to address alleged failure to obtain "critical videotape").

19 Consequently, if the government elects to file a new motion, it should make clear  
20 therein that the finding it seeks is broad enough to encompass all of the allegations raised  
21 in support of defendant's remaining claim.

22 **IT IS SO ORDERED.**

23 Dated: March 25, 2015

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25 MAXINE M. CHESNEY  
26 United States District Judge  
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